APPELLANT PRO SE:

JOANN M. ALEK
Ocala, Florida

ATTORNEY FOR APPELLEE:

SUSAN KOZLOWSKI
Kozlowski Law Offices
Crown Point, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE ESTATE OF AUDREY A. KONKEY, DECEASED	))))))	No. 45A03-0605-CV-224

APPEAL FROM THE LAKE CIRCUIT COURT
The Honorable Lorenzo Arredondo, Judge
The Honorable Christina J. Miller, Magistrate
Cause No. 45C01-0312-MI-182

January 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Pro se appellant-petitioner Joann M. Alek appeals the trial court's grant of the motion to dismiss filed by the representatives of the Estate of Audrey A. Konkey (the Estate). Concluding that the law of the case doctrine bars us from ruling on this previously decided issue, we affirm the trial court's grant of the Estate's motion to dismiss. In addition, as per its request, we award the Estate appellate attorney fees and remand this cause to the trial court for a determination as to the amount of fees.

FACTS

The facts of this case, as found by our court in Alek's previous appeal, are:

> On August 7, 2003, the Estate filed a Petition for Probate of Will and Issuance of Letters regarding Audrey Konkey's estate. Additionally, the Estate requested unsupervised administration. On November 3, 2003, Alek filed a will contest petition entitled "In the Matter of the Unsupervised Administration of the Estate of Audrey A. Konkey Deceased." The document failed to name any beneficial party as a defendant. The summons for Alek's contest was issued on December 9, 2003, under cause number 45C01-0312-MI-00182. The estate filed a Response to Will Contest Petition, which included a request for attorney fees.
>
> On August 2, 2004, the trial court [granted the Estate's motion to dismiss, finding] . . . 'that the Petitioner failed to file her Will Contest in a timely fashion pursuant to I.C. 29-1-7-17. Accordingly, the Court orders that the Petitioner's Will Contest be dismissed in whole . . . .'

Alek v. Dudash, No. 45A03-0502-CV-57, slip op. at 2-4 (Ind. Ct. App. Jan. 17, 2006) (Riley, J., dissenting) (internal citations omitted).

We affirmed the trial court's dismissal of Alek's will contest petition in an unpublished memorandum decision:

> [A]lthough Alek originally filed her will contest petition within the statutorily prescribed deadline, she fatally failed to name anyone as a beneficially interested defendant as required by Indiana Code section

> 29-1-7-17. Furthermore, Alek never submitted a subsequently amended will contest petition, such that her amended contest might date back to the original filing date, in accordance with Smith. In the present case, no defendants were named and no effort to comply with the statutory requirements has since been demonstrated. Since Alek failed to properly file a proper petition to contest Audrey Konkey's will, we conclude that the trial court properly dismissed Alek's will contest petition.

Id. at 5 (emphasis added).

On February 8, 2006, in response to our memorandum decision, Alek filed a motion to correct error with the trial court and petitioned the court to amend the will contest to include as defendants "all persons beneficially interested." Appellant's App. p. 15. On March 14, 2006, the Estate filed a motion to dismiss Alek's motion to correct error and requested an award of attorney fees for the time spent on Alek's "frivolous pleadings." Appellant's App. p. 34-35. On May 17, 2006, the trial court granted the Estate's motion to dismiss. Alek now appeals.

DISCUSSION AND DECISION

I. Law of the Case Doctrine

Under the law of the case doctrine, an appellate court's previous determination of a legal issue is binding both on the trial court on remand and on the appellate court in a subsequent appeal, given the same case with substantially the same facts. Kocher v. Gertz, 844 N.E.2d 1026, 1030 (Ind. Ct. App. 2006), trans. denied. Therefore, all issues decided directly or implicitly in a prior decision are binding on all subsequent portions of the case. Id. The doctrine is based upon the sound policy that when an issue is once

litigated and decided, that decision should be the end of the matter. Humphreys v. Day, 735 N.E.2d 837, 841 (Ind. Ct. App. 2000).

As noted above, our court affirmed the trial court's dismissal of Alek's will contest petition in the prior appeal. Alek, slip op. at 4-5. Alek presents no new facts or evidence that were not presented in her previous appeal to our court. Therefore, the law of the case doctrine bars us from ruling on this previously decided issue, and we affirm the trial court's grant of the Estate's motion to dismiss.

II. Appellate Attorney Fees

The Estate requests appellate attorney fees to compensate it for the time spent on this appeal "which is devoid of any cogent legal argument [and demonstrates] Alek's continued abuse of the legal system in her seemingly unending quest to file a will contest preventing this estate from ever being closed." Appellee's Br. p. 4.

Indiana Appellate Rule 66(E) provides, in pertinent part, "[t]he Court may assess damages if an appeal . . . is frivolous or in bad faith. Damages shall be in the Court's discretion and may include attorney's fees." Our discretion to award attorney fees under Indiana Appellate Rule 66(E) is limited, however, to instances when an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay. Thacker v. Wentzel, 797 N.E.2d 342, 346 (Ind. Ct. App. 2003). Just as pro se litigants are required to follow all of the rules of appellate procedure, they are also liable for attorney fees when they disregard the rules in bad faith. Boczar v. Meridian St. Found., 749 N.E.2d 87, 95 (Ind. Ct. App. 2001).

In our previous memorandum decision, we awarded $500 to the Estate for the "fees incurred by the Estate in responding to Alek's appeal." Alek, slip op. at 7. Once again, we find that the Estate is entitled to an award of appellate attorney fees for Alek's frivolous appeal. We remand this case to the trial court for a determination of the award amount.

The judgment of the trial court is affirmed and this cause is remanded to the trial court for the calculation of appellate attorney fees.

DARDEN, J., and ROBB, J., concur.